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UNITED STATES OF AMERICA	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
	)	
	)	MOTION FOR LEAVE TO FILE
	)	MOTION FOR RECONSIDERATION
	)	OF THE COURT'S DENIAL OF
	)	LEAVE FOR THE AMICUS
	)	CURAE TO FILE RESPONSE
	)	TO GOVERNMENT'S REPLY BRIEF
v.	)	OF
	)	31 AUGUST 2007
	)	
	)	Case No. 07-001
	)	Hearing Held at Guantanamo Bay, Cuba
	)	on 4 June 2007
	)	Before a Military Commission
	)	Convened by MCCO # 07-02
	)	Presiding Military Judge
OMAR AHMED KHADR	)	Colonel Peter E. Brownback III
	)	

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**TO THE HONORABLE JUDGES OF THE COURT OF MILITARY  
COMMISSIONS REVIEW**

The undersigned individuals respectfully request that the Court of Military Commissions Review reconsider its order denying leave for the filing of an *amicus curiae* brief (as corrected) in response to the Government's August 31, 2007, reply to the *amicus curiae* brief previously filed in this case. These motions are combined pursuant to Court of Military Commissions Review (CMCR) Rule 20(a).

**ARGUMENT IN SUPPORT OF MOTION FOR LEAVE  
TO FILE A MOTION FOR RECONSIDERATION OF THE COURT'S DENIAL  
OF LEAVE FOR THE AMICUS CURAE TO FILE RESPONSE TO THE  
GOVERNMENT'S REPLY BRIEF OF AUGUST 31, 2007.**

Pursuant to CMCR Rule 20(a), we respectfully request that this Court grant *amici's* Motion for Leave to File a Motion for Reconsideration of the Court's Denial of Leave for

the Amicus Curiae to File Response to the Government's Reply Brief of August 31, 2007. In its Reply Brief, the Government has asserted propositions that, without attention, may introduce error into these proceedings. In order to ensure a complete and developed record, *amici* request an opportunity to respond to the legal arguments put forth by the Government.

### **ARGUMENT IN SUPPORT OF MOTION FOR LEAVE TO FILE A RESPONSE**

#### **1. Statement of Facts:**

The Government's reply brief had been filed electronically on Friday, August 31, 2007 at approximately 4:30pm. Because September 3, 2007 was Labor Day—which is a Federal holiday—the five-day period for filing the amicus response to the government's reply brief, as designated in Rule 14(c)(2) of the Rules of Practice for the Court of Military Commissions Review (Rule(s)), would, when read in accordance with Rule 7 (computation of time), indicate a filing deadline of Monday, September 10, 2007 for the Amicus response brief. (Had the amicus response been due on Friday, September 7, there would have been only four working days, including September 7<sup>th</sup>, to prepare the response brief.) The amicus response (as corrected) thus was timely filed, on the evening of Sunday, September 9, 2007.

On September 13, 2007 the *amicus curie* received notice that the Court had denied the filing of the response brief; and it is this denial that the *amicus curie* is requesting the Court to reconsider. Since the Court stated no reason for the denial, the *amicus* assumes that, because the intervening holiday might have caused a miscalculation of time, the denial might have been predicated on a "late filing."

## 2. Reasons for Reconsideration:

First, as noted immediately above, when Labor Day, a Federal holiday, is excluded, the period for the reply brief is to be calculated from Tuesday, September 4<sup>th</sup> – the first working day after the filing of the Government’s reply brief. The *amicus* submits that five working days, beginning on Tuesday, September 4, 2007, should properly have been allowed. The amicus response, thus, was timely filed.

As Rule 7 of the Court of Military Commission Review Rules of Practice states: “In computing any period of time prescribed or allowed by these rules... the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the computed period is to be included, unless it is a Saturday, Sunday or legal holiday.” While there is no mention of restrictions for the first day of the designated period, it is understood that the last day of filing should not be on a weekend or a federal holiday.

Secondly, the doctrine of *de minimus* should be applied in this instance. The working day of the Court apparently ended at 5:00pm on September 7. The electronic submission of the (uncorrected) amicus reply brief was received on that date – even though it was six minutes after closing time.

(The amicus response brief was filed electronically at 5:06pm on September 7, 2007. Subsequently, over the weekend some errors were located in the response brief, as it had been transmitted electronically; and so on Sunday afternoon, September 9, 2007, a corrected response brief was filed electronically.)

Even if the Court were to hold that the filing deadline was on Friday, September 7, the difference in time between electronically filing at 4:59pm and 5:06pm on that Friday

afternoon could have not prejudiced the Government and is too trivial to justify the Court's disregarding a response brief which may be of assistance in deciding an important issue. Furthermore, the Government has no right to file any further pleading with respect to the *amicus* response brief; and so the filing delay – if there were any – did not prejudice the Government in preparing for any further proceedings in the case. In no way will the receipt of the response brief delay any further proceeding in this case; and indeed the arguments it presents may facilitate the Court's resolving the issues in this case. Cf. Rule 16(b). Therefore, even if the Court were to conclude that the filing deadline was Friday, August 31, it should be possible for the Court to receive the brief.

The “circumstances” that have been recounted hereinabove are in themselves “extraordinary”. Even more significant is the likelihood that consideration of the response brief filed by the *amicus curiae* would be of help to the Court in its resolution of an “extraordinary” and important issues raised in this case – issues which will have significant implications for the future.

**WHEREFORE** the *amicus curiae* respectfully requests this Honorable Court to reconsider its earlier denial of leave to file the response brief and to now allow the filing of the *amicus curiae* brief responding to the Government's reply brief of August 31, 2007.

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was emailed to Judge Mark Harvey, [harvey@osdgc.osd.mil](mailto:harvey@osdgc.osd.mil), who has indicated that he will provide it to the relevant parties, at Durham on the 20 day of September 2007.

**Respectfully submitted,**

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